1942. K File No. B. Molasses/42

P-33/E

Legal DEPARTMENT

B BRANCH

Subject:—

Governors' Bill NO. XVIII 1942

A Bill to regulate the Possession of Molasses in the Province of Bombay.

Bom XVIII of 1942.

File No. B. Molasses/42

Std. Sectt. Slip 24 B a.

506-B

C O N T E N T S.

K

Legal Department File No. B.Molasses/ 1942.

Sr. No.	Compilation No.	Subject	Pages
		A Bill to regulate the possession of Molesses in the Provine of Bombay.	
1.	U.R. to R.D.No. 3095 dt. 4-6-41	Undertaking legislation for regulating Possession of Molasses.	1.
2.	U.R. to R.D.No. 147-L dt 23-7-41	Revised Dwaft Bill	3-5
3-	U.R. to R.D.No. 166-L dt. 22-7-41	Definition of Molesses	~~4-7~~ 7
4.	R.D.No. 8654 dt. 8-9-41	Adv.Genl's opinion reg. the Bill	9 ~~13-15~~
5-	R.D.No.9887 dt. 22-10-41	Govt. of India's Opinion reg. The competence of the Provincial Legislature reg the Bill	~~15~~ 11 ~~17~~
6.	U.R. to R.D.No. 9741 dt. 12-11-41	Soliciting Govt's orders reg. Legislation	~~19-21~~ 13
7.	U.R. to R.D.No. 10624dt.8-12-41	Ruling of the Patna High Court reg. prohibition of certain forms of intoxicating liquor.	15 ~~22.~~
8.	U.R. to Adv. Genl. 2902 dt.8-4-42 R.I.No. 3782 dt. 20-4-42,	No. Whether the Bill is published can be said to offend against the provisions of S.297(1) of the constitution Act.	17-19 25-29
9.	L.D. letter No. 3995dt.13-5-42 R.I.No.5080 dt. 9-6-42 U.R. to R.D.No. 4916dt ,16-6-42	The Bombay Molasses Bill, 1942.	21-27 ~~31-37~~
10	----------	Bom. Act.No.XVIII of 1942	~~39-46~~
11.	----------	Governor's Bill No..XVII of 1942	~~47-55~~
12.	R.H.No.C. 10863dt .17-10-42	G. J 's assent to the Bill	~~57~~ 29-41
13.	G.H.D.D.No.8493 dt. 20-10-42	Publication of Bom. Act No. XVIII of 1942.	~~59-67~~
14	---666----	Governor8s Bill No. XVII of 1942	~~69-97~~
15	----------	Bom Act No. XVIII of 1942.	~~99-128~~

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Office of the R.L.A.

The proposal in this case is to undertaken legislation for regulating the possessiegon of Molasses and the Remembrance r of "egal Affairs is asked to put in legal form the draft Bill at pages 495959 ante. The procedure to be followed before a Bill is drafted by the Remembrancer of Legal Affairs is laid down in instructions 24 and 26 of the Instuctions made under the Rules of Business and the Secretary to the Governor's Circular No. 12/1, dated the10th May 1937 and P.& S.D Circular No. 996/34, dated the 3rd September 1938. Under these instruction s the papers are to be sent to the Remembrancer of Legal Affairs f for drafting the Bill after legislation is decided upon by Gov rnment. Under paragraph 2(1)(p) of the Sec-retary to the Governor's Circular No. 12/1, dated the 10th May 1937 every ca se regarding propo-sals involving legislationhas after consideration by the Minister (now the Adviser) in charge and before the issue of orders to be submitted to His Excellency and the Governor, As it was found that the procedure laid down in thes-e instructions and the circular was not being observed by all the departments, a fresh circuar was issued by the Chief Secretary in 1938 (Circular No. 996/ dated 3-9-38z) explaining the whole procedure in greater detail and all departments were requested to follow this procedure in future. R.D. may condider whether the normal procedure prescribed in these instructions should be followed in this case before the Bill is drafted by the Remembrancer of Legal Affairs. If however R.D. or A(F) considers that there are sufficient reasons for departing from the normal procedure, the papers may be returned to this office for drafting the Bill.

D.C sd./-P.N.Moos
4-4

Re membrancer of Legal Affairs..

U.R. to R.D., No. 3038, dated the 4th April 1941.

S.A.K.

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Office of the R.L.A.,

A revised draft Bill is sent herewith.

2. Title and preamble. - Para. 10 of A(F)'s note pp. ante 134-135 ante:- The preamble and the short title have been revised in view of the remarks made by A(F) The draft Bill provides for the control of possession only of molasses. It does not provide for the control of sale of molasses. It would not, therefore, be appropriate to refer to sale of molasses in the title and preamble.

3. Clause 2: Para. 11 of A(F)'s note, p. 135 ante:- The clause has been redrafted on the lines suggested by A(F).

4. Clause 3: Para. 12 of A(F)'s note, pp. 135-136 ante:- The definition of the expression "molasses" has been recast on the lines suggested by A(F). It is presumed that it is not intended to delete the reference to the manufacture of sugar from beet. the reference has, therefore, been retained in the revised definition.

5. Clause 4:- This is a new clause inserted on the lines of section 5 of the Bombay Abkari Act. 1878. as suggested by the Commissioner of Police in para. 5 at p. 113 ante and in the R.D. office note at p. 123 ante approved by A(F) in para. 1 of his note at page 133 ante.

6. Clause 6. para. 13 of A(F)'s note at p. 136 ante:- This clause corresponds to clause 4 of the original draft Bill. As the scheme of this clause provides that the Collector shall grant licenses only if he is authorised by the Provincial Government by general or special order, no amendment in this clause appears necessary as suggested by A(F). Clause 17 of the revised draft Bill also provides that all officers shall exercise their powers under this Act in accordance with such orders as in the case of the Commissioner the Provincial Government and in the case of other officers the Provincial Government or the Commissioner may from time to time make. No further amendment is necessary in view

S.A.K.
27-4

of the judgment in the Toddiwala case. If the intentionis that the order of the Collector granting or refusing to grant a license shall be final, a new clause may be inserted in the Bill providing that an order passed by the Co lector under sub-section (2) of section 5 (or undersection 6) shall not be called in question in any court.

7 7. Clause 6:Para. 6 of A(F)'s note at p. 134 ante:- This clause corresponds to clauses 5 of the original draft Bill. The clause has been revised on thelines suggested by the Commissionerof Excise at p. 121 ante.

8. Clause 7: Paras. 9and 14 of A(F)'s note at pp. 134 and 136 ante:- This clause corresponds to clause 6 of the original draft Bill. As suggested by the Commissionerof Police at p. 112, ante, provision has been made for penalty for a contravention of the provisions of rules also. As suggested by A(F) at p. 136 ante, the sentence of imprisonment has been reduced from 3 months to one month.

9. Clause 8.- This clause corresponds to clause 7 of the original draft Bill. As suggested by the Commissioner of Police at p. 112 ante and agreed to by A(F) in para. 7 of his note at p 134 ante, provision has been made in this clause for confiscation of molasses kept in contravention of the provisionsof rules also, It appears necessary to provide in this clause for confiscation of all receptacles, packages, etc. in which the molasses liable to confiscation is contained. A provision has provision in section included in the clause on the lines of the provision in section 20 of the Bombay (District) Tobacco Act, 1933

10- Clause 9:Para. 4 of A(F)'s note, p. 133 ante:- This clause corresponds to clause 8 of the original draft Bil . he provision inthis clause is on the lines of the provision in section 40 of the Bombay Abkari Act. As suggested by the Commissioner of Police at p. 112 ante, it is provided in therevised clause that officers of an-dxkxoxx above the rank of Inspector should exercise the power of issui g warrants underthe clause. Such officers will include the Commissioner andCollector as they are also Abkari

Officers as defined insection 3(1) of this Act read with section 3(2) of the Bombay Abkari Act. The provisionin sub-clause (2) of the clause has beenbrought in line with the provisionin the last para. of section 40 of the Bombay Ab ari ct by providing that the warrants issued under the clause shall be executed by a Police or Abkari Officeer duly expowered by the Provincial Government instead of by a Police or Abkari Officeer duly empowered by the Commissioneras provided in the original clause.

11.Clause 10:-This clause corresponds to clause 3 of the original draft Bill. Provision has been made dub-clause (1)(b) for the seizure of every box, receptable, package or covering in which molasses liable to confiscation is contained, as su ested by A(F) in para. 4 of his note at page 133 ante, The Commissioner of Police has suggested thata provision should be made in the Bill on the lines of section 37 of the Bombay Abkari Act. The amax clause as redrafted contains all the necessary provisions. The power to seize molasses which isliable to confisca tion under clause (b) or the power to arrest under clause (c) may be exercised in any place including public places and streets.

12. Clause 11:-The clause corresponds to clause 10 of the original draft Bill.

13.clauses 12 and 13:-These two new clauses have been inserted on the lines of sections 53 and 3A of the Bombay Abkari Act, 1878, as suggested by the Commissionerof Police in para. 6 of his note at p. 113 ante and para. 3 of the R.D. note a p. 123 approved by A(F) in para. 2 of his note at p. 133.

14. Clause 14:-This clause corresponds to clause 11 of the original draft Bill. Provision has beenincluded prescribing the procedure to be followed when articles ot orthan molasses such as boxes, receptacles packages or voverings containing molasses are seized.

15. Clause 15:-This clause corresponds to clause 12 of the original draft. Provision has been made in sub-clause (1) on the lines suggested by the I.G.P. at pp. 116-117 ante and para. 7 of A(F)(s note at p. 134 ante . Two new provisoes providing

for the sale and destruction of molasses have also been added.

16. Clauses 16 to 19 :- These clauses correspond to clauses 13 to 16 of the original draft Bill.

O.C. sd/- P.N.M.
23-7

Remembrancer of Legal Affairs.

U.R. to R.D.No. 147/L dated the 23rd July 1941.

S.A.K.
27-4

Office of the R.L.A.

The question raised is technical and not legal. I am personally inclined to agree with Secretary, R.D., that the definition suggested by the Director of Imperial Institute, Cawnpore is very wide. It is, however, for R.D. to decide in consultation with its technical expeets as to what would be a suitable definition. The following definition is suggested for consideration of R.D.:-

"(d) "Molasses" means the heavy, dark coloured residual syrup drained away in the final stage of the manufacture of gur or sugar containing, in solution or suspension, xugnax sugars which can be fermented, and includes any product formed by the addition to such syrup of any ingredient which does not include any article which the Provincial Government may by notification in the Official Gazette declare not to be molasses for xxx the purposes of this Act."

O.C. Sd/-P.N.M.
29.7

Nomenclancar of Legal Affairs.

U.R. to R.D. No. 166-L dated the 29th July 1961.

S.A.K.
27-4

The proposed legislation will, I thin , be withinthe powers of the rovince.

2. I do not think that the legislationcan be said to fall under entry Nol 31 of the provincial egislative List. The entries enumerate the heads or subject matter in respect of-w which the rovinces may legislate so that one has to see the proposed legislation and exmine the entries in order to see whether the subject matter of the legislation can be said to fall within any of the entries in the ListExamining the Bill, it could not be said that its subject matter is theproduction, manufacture. possession, etransport, purchase and sale of intoxicating liquors. No. doubt, the eexpressed object of the Bill in the preamble is to prevent the use of molasses for the manufacture of liquor; but, we are concerned not with the object but with the provisionsof the Bill . And these do not relate to the matte.s enume ated under the entry.

3. Molasses would, however, be goods in entry No. 29 and the provisions of the Bill would, I think, fall under entry No. 29 which mentions production, supply and distribution of goods The subsidiaryprovisions of the Bill would be covered by entries 37 and 2 in the rovincial and Concurrent Lists respectively.

4. As to the decision of the special Bench in 40 Bom. 777 the opinion expressed by the High Court in that case was obiter as pointed out by them in their Judgment. The correctness of the opinion expressed by them was, however, open to grave doubt. The Federal Court have now authoritatively laid down (3 F.L.J.16 that legislation purporting to deal with a subject in the Provinicial List will not be invalid by reason of its touching a matter in the Fede al List. That decision, in my opinion, ~~materia=the~~ considerablyshak s the weight of the opinion expressed by the High Court in 40 Bom . 777.

5. Moreover, molasses, I expect, is not imported across the sea frontier of Bombay, The Necessary provision may be made in the Notifications or license to be issued in regard to export or import across the land customs frontiers.

Sd/-
Advocate General.
8-9-41

S.A.K.
27-1

No. 46/41-p..
GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

From

Sir George Spence, C.S.I., C.I.E., I.C.S.,
Secretary to the Government of India.

To

The Secretary to the Government of Bombay,
Legal Department,

New Delhi, the 17th October, 1941.

Sir,

With reference to your letter No. 200 p-Confl, dated the 13th ~~12~~ September, 1941, I am directed to state that in the opinion of the Central Government the enactment of the Bill forwarded therewith is within the competence of the Provincial Legislature as being relatable to entry 29 and / or 31of the rovincial egislative List.

2. As regards the observations by way of obiter in 19 40 Bombay 777, to which reference has been made, the Government of India think that it would be unsafe to assume that the Bombay High Court would be deterred by the decision in F.L.J. 157 or otherwise from affirming the view taken therein should a like pointarise for actual decision. They suggest in this connection that inasmuch as the preamble to the Bill exhibits the only object thereof as the control or the possession of molasses inorder to prevent its use for the manufacture of liquor in the province of Bombay, any controversy in this connection would be capable of being avoided by the insertion ~~in~~ in clause 6 of provision to the effect that nothing therein shall be deemed to prohibit the possession without a licence of molasses which having been imported across customs frontiers is in an area in the province of Bombay in which the Act is for the time being in force (sub-clause (2) of clause 2) for the purpose not of use or consumption in such area but of transit to an area outside the province of Bombay or to an area within the province in which the Act is not for the time being in force.

I have the honour to be,
Sir,
Your obedient servant

sd/-

Secretary to the Governmentof India.

S.A.K.

Office of the E.L.A.

A copy of the Statement of the Case together with copies of the opinion of the Advocate General andof the letter from the Government of India, Legislative Department dated 17th October 1941 as forwarded to the Revenue Department.

2. In their letter the Govt. Government of India state that in their opinion the Bill is within the competence of the Provincial Legislatures. To avoid any difficulties which might arise as a result of the obiter opinion expressed by the High Court in Dantes case, 1940 Bom. page 777, the Government of India have suggested insertion of the following provision in clause 5 of the Molasses Bill:-

"Nothingcontained in section 5 shall be deemed to prohibit the possession without a license of molasses which having been imported across the customs frontier is in an area in the Province of Bombay in which the Act is for the time being in force for the purpose not of use or consumption in such area but of transit to an area outside the Province of Bombayor an area within the Province in which the Act is not for the time being in force."

It does not appear that theprovision suggested by the Government of India affords any adequate solution of the difficulty. The provisiononly provides for a case when molasses is imported across the customs frontier into an area in the Province in which the Act is in force and is possessed for the purpose of transit to a place outside such area. But according to the observations of the Bombay High Court in the above case, the Provincial Legislature has no power to pass any law prohibiting possession of intoxicants so as to

affect imports and export across the customs frontier. In view of these observations it appears that it will not be lawful to prohibit possession of molasses which is import-ed into the prohibited area across the customs frontier for consumption or use in such are. Similarly, it will not be lawful to prohibit possessionof molasses whichis possessed for the purpose of exporting it across the customs frontier. The only way to meet the difficulties which might earise in consequence of the view taken by the High Court would be to insert a provisionin the Bill on the lines of the provision inserted in the notifications issued under section 14B of the Bombay Abkari Act, 1878 , after 1st July 1940 to the effect that nothing in the Act shall affect the right of any person to possess molasses, if the possession of such molasses is incidental to its import into or the export from the Province of Bombay, across the customs frontier as a defined by the Central Government.

3. Revenue Department should now obtain the orders of Government whether legislation should be undertaken and if so whether a provision on the lines suggested by the Legislative paragraph 2 above should be made in the Bill.

O.C. sd/- P.N.M.

10-11

Remembrancer of Legal Affairs.

U.R. to R.D., No. 9741, dated the 12 th November 1941.

S.K.K.

23-4

1.5

Office of the H.L.A.

In "King Emperor vs. Bhola Prasad" the Patna High Court has held that the prohibition of certain forms of intoxicating liquor in certain areas in the Province is nothing more than legislation with respect to the possession of intoxicating liquors within the meaning of entry 31 of the Provincial Legislative List in the Se venth Schedule to the Government of India Act, 1935. From newspaper reports it appears that an appeal against the Patna High Court 's decision has been filed in the Federal Court and it is possible that the Federal Court may give a ruling on the question of the competence of the Provincial Legislature to prohibit possession of liquors. Such a ruling would undoubtedly be of assistance in connection with clause 6 of the Molasses Bill.

O.C. sd/- P.N.H.

6-2

Remembrancer of Legal Affairs.

U.R. to R.D., No. 10524, dated the 8 th December 1941.

S.A.K.

28-4

In the case of 'Bhola Prasad vs. The King Emperor' which had gone in appeal to the Federal Court a point was raised by the appellant that section 19(4) of the Bihar and Orissa Excise Act, 1915, as amended by Bihar Act VIII of 1940 was invalid because of repugancy to section 297 (1)(a) of the Government of India Act, 1935, Section 19(4) of the Bihar and orissa Excise Act as amended by Bihar Act VIII of 1940 runs as follows:-

"(4). Notwithstanding anything contained in the foregoing sub-sections, the Provincial Government may, by notification, prohibit the possession by any person or class of persons or, subject to such exceptions, if any, as may be specified in the notification, by all persons either in the provinceof Bihar or in any specified local area of any intoxicant either absolutely or subject to such conditions as it may prescribe."

The Federal Court in its judgment atpages 257-279 ante has bheld that section 297~~(1)~~ (1) (a) refers to legislation with respect to entry No. 27 and entry No. 29 in the Provincial Legislative List and that it has no application to legislation with respect to anything in entry No. 31 in the said List. As the Bihar Act was legislation legislation with respect to a matter in entry No. 31 and not in entry No. 27 or entry No. 29, the Federal Court held that there was no substance in the appellant's argument that section 19(4) of the Act was repugnant to section 297(1)(a) of the Government of India Act, 1935 . As regards the Molasses Bill the Remembrancer of Legal Affairs has held that it falls under entry No. 31 of the Provincial

S.A.K.
28-4

Legislative List (R.L.A's opinion No . 2845, dated 27th August 1941.). The Advocate General to whom the Bill was referred has however held that it falls under entry No. 29. The Government of India think that it falls under entry No. 29. and /or 31 of the Provincial Legislative List. If the Molasses Bill falls under entry No.. 29 of the Provincial Legislative List, it is likely that the Courts will hold that clause 6 of the Bill is repugnant to section 297(1)(a) of the Government of India Act on the ground that in effect it prohibits the entry of molasses into areas in which it is in force.

2. As the point dis cussed above is of great constitutional importance and effects the validity of the Molasses Bill unless it is suitably amended on the lines indicated on page 203 , the Advocate General is requested to favour Government with his opinion in the matter.

O.C. P.N M.

2-4-

Remembrancer of Legall Affairs.

U.R. to the Advocate General No. 2902, dated the 2nd April 1942.

S.A.K.

28-4

The question for consideration is whether the Bill as punlished can be said to offend against the provisionsof section 297(1) of the Constitution Act.

2. That section, in substance, and omitting the unnecessary parr of it, states that no Provincial Legislature shall by virtue of Entries 27 and 29 in the Provincial Legislative List prohibit or restrict the entry into, or export from, the Province of goods of any class or description. The proposed legislation is undoubtedly sought to be made by virtue of Entry 29 The question , therefore, is whether, looking at its pith and substance, it can be said to restrict the entry into or export from the Province of molasses.

3. The Federal Court has repeatedly laid down that in considering the legislative scope of the Centre and the Province as laid down in the Entries in the Lists, one must consider mainly what the proposed legislation relates to directly and not its indirect effect and consequences. Applylying this test it seems to me that the proposed legislation in nowise restricts or prohibits the entry of molasses into the Province or its export from the Province. All that it does is to prohibit the possession of it within the Province. This may have the effect no doubt of preventing its import into and export from the Province. That however would be merely an indirect consequence of the legislation and cannot be said to be its subject matter.

4. It has to be remembered that the object of section 297(1) is to prevent restrictions on internal trade and discrimination in respect goods in one Province as compared with goods in another. The present legislation involves no such restriction or discrimination. The Province considers it necessary to prohibit the possession of a certain class of goods within its territory. The prohibition or restriction to such possession is imposed not only in reference to goods which may be imported into the Province from outside but also in respect

of goods which may be manufactured in the Province itself.

5. I am conscious that my reasoning in para 3 above is contrary to the way in which the Special Bench of the Bombay High Court looked at matters in the Prohibition Case. However, as I have stated above, that view of the Bombay High Court has in effect been negatived by the view to the contrary repeatedly taken by the Federal Court.

6. In order to avoid the possibility of the contention that the Bill offends against section 297(1) , section 5(3) of the proposed Bill be re-drafted to run as follows:-

> (3) Nothing in this Act shall affect the right of any person to possess molasses, if the possession of such molasses is incidental to its entry or import into or to its export from the Province of Bombay.

This however may have the effect of rendering the enforcement of the Prohibition against possession difficult if not nugatory I would, therefore, leave section 5(3) as drafted unaltered.

Sd/-

Advocate General.

19-4-42.

S.AIK.
28-4

231-

Urgent . No. 3996.

Legal Department.,

Bombay Castle, 13th May 1942.

From

P.N.Moos, Esquire, Bar-at-Law, I?C.S.,
Secretary to the Government of Bombay.

To.

The Secretary to the Government of India.
Legislative Department.

Subject:- The Bombay Molasses Bill.

Sir,

With reference to the correspondence ending with your letter No. 46/41-P dated the 17th October 1941, on the above subject, I am directed to forward herewith a copy of the revised Bombay Molasses Bill which the Government of Bombay proposes to enact into law.

2. As regards paragraph 2 of your aforesaid letter the Government of Bombay now considers it safe to omit sub-clause (3) of clause 5 in altogether in view of the fact that the observations made by way of obiter in 1940 Bom. 777 in relation to entry No. 19 of the Federal Legislative List have in effect been negatived by the view to the contrary consistently taken by the Federal Court and finally repeated in Bhola Prasad vs . The King Emperor Federal Court case No. VIII of 1941.

3. Should however the Government of India still prefer to advise retentionof sub-clause (3) of clause 5 the Government of Bombay would suggest its retention in the form already proposed by this Government for the following reasons:

It is true that the said clause 5(3) is not on the lines of the provision suggested in paragraph 2 of your letter under reference. The view taken by the Government of Bombay is that the provision sug gested by the Government of India may notafford adequate solution of the difficulty inasmuch as it only provides

S.A.K.
28-4

ror a case when molasses is imported across the customs frontier into an area in the Province in which in Act is in force and is possessed for the purpose of transit to a place outside such area. But according to the observations of the Bombay High Court in Dantes case above referred to the Provincial Legislature has no power to pass any law Prohibiting the possession of intoxicants so as to affect import and export across the customs frontier. In view of these observations it appears that it will not be lawful to probibit possession of molasses imported into the prohibited area across the customs frontier for consumption for use in such area. Similarly, it will not be lawful to prohibit possession of molasses possessed for the purpose of exporting the same across the customs frontier. o meet these difficulties which might arise in consequence of the view taken by the High Court clause 5(3) as proposed by this Government would be adequate.

I am to request you to be so good as to favour this Government , if there be no objection, with the views of the Legislative Depargment whether clause 5(3) should not be omitted altogether and if not whether for the reasons stated above A clause 5(3) as proposed by this Government would be suitable.

Your obedient servant,

O.C. P.N.M.

12-5

Secretary to the Government of Bombay,
Legal Department.

S.A.K.
28-4

No. 38/42-r.
GOVERNMENT OF INDIA,
LEGISLATIVE DEPARTMENT.

From

H.D. Benjamin, Esquire, I.C.S.,
Additional Deputy Secretary

The Secretary to the Government of Bombay.
Legal Department.

Simla, the 5th June 1942.

Subject :- The Bombay Molasses Bill , 1942.

Sir,

In reply to your letter No. 3985. dated the 15th May 1942. I am directed to observe that altho gh the preamble to the Bill indicates that its purpose is relatable to entry 31 in the Provincial Legislative List, the Bill itself seeks to control the possession of a substance which is not anintoxicant, though it is capable of producing an intoxicant. Molasses is a substance, moreover, which can be , and is, put to a variety of other uses in which its fermentation is not involved. For this reason the Government of India incline to the view that the Bill is primarily and substantially relatable to entry 29 of the List II rather than to entry 31. On this view it would follow that in seeking to restrict the possession of molasses without qualification as to the use to which it is intended to put the same substance, the bill is in danger of coming into conflict with the provisions of clause (a) of sub-section (1) of section 297 of the Constitution Act. It is to be observed that while the judgment of the Federal Court cited in paragraph 2 of your letter under reply saves matters relatable to entry 31 of List II from the mischief of that matters relatable to entry 27 or entry 29 of that List may be affected thereby.

2. So long, however, as the Bill on becoming law is operted in such manner as to avoid falling foul of the constitutional provision, so long, that is to say, as licenses are freely (and perhaps cheaply) granted for uses against which the Bill is not purporting to legislate, especially when inter-provincial trade in the commodity is likely to be affected, it may not be necessary to & inserte in the Bill provision expressly designed to conform to section 297 of the Government of India Act, 1935.

S.A.K.
28-4

3. With regard to the obiter dicta of the Bombay High Court in Dantes' case, I am to suggest that paragraph 3 of your letterappears to import into those observations a more rigid limitation of Provincial legislative competence than they were intended to convey. At the same time, it is not considered that the Bill is in serious danger of conflicting with section 100 of the Constitution Act read with entry 19 of the Federal List.

4. While offering the above views for the consideration of the Government of Bombay, I am to say that this Government would not seek to influence the Provincial Government in determining whether (and if so, what) provision should be included in the Bill to meet either or both of the constitutional aspects under discussion in this correspondence.

I have the honour to be,
Sir,
Your obedient servant,

Id/-

Additional Deputy Secretary to the Government of India.

S.A.K.
28-4

Office of the R.L.A.

These papers were referred by the R.D. to R.L.A. for adressing the Government of India as regards the drafting of clause 5(3) of the Bill at page 157 ante (see, p. 239 and 255 ante). This clause was proposed to be inserted ~~xxxx~~ in the Bill in view of the obiter opinion expressed by the Bombay High Court in the prohibitioncase of King Emp. vs. Dantes, 1940 Bom. page. 777 (see para. 2 of R.L.A's opinion at pp. 201-203 ante). This opinionof the Bombay HighCourt has however been since negatived by the Federal Court in an appeal from a decision of the Patna High Court, see Bhola Prasad vs. King Emperor, Federal Court ~~xxxxxxxxxxxx~~case ~~xx~~ No. ~~xxxxxxxxxxxx~~VIII of 1941. In view of this decisionof the Federal Court ~~xx~~ there remains now no necessity for inserting a provision as in clause 5(3) of the Bill. The Legislative Deppt. of the Governmentof India was addressed in the matter and in its view alsothe Bill is not in servious danger of conflicting with sec. 100 of the Government of India Act read with entry 19 of the Federal Legislative Deptt. of the Government of India dated 13th May '42 and of the reply dated 5th June 1942, received from it are sent herewith). It is not, therefore, necessary to make any provision in the Bill as in sub-clause (3) of clause 5 at p. 215 ante or on the lines suggested in para. 2 of the Govt. of India letter at p. 215 ante. The sub-clause may therefore be deleted.

2. In Bhola Prasad's case referred to above, a further point was raised that sec. 19(4) of the Bihar and Orissa Excise Act, 1915, as amended by Bihar Act VII of 1940 which empowereed the Provincial Government t prohibit, by notification, the possession of any intoxicant was invalid because it was repugnant to the provisions of sec. 297(1)(a)

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of the Govt. of India Act. This section provides that no Provincial Legislature or Govt. shall by virtue of the entry in the Provincial Legislative List relating to trade and commerce within the Province or the entry in that list relating to the production, supply and distribution of commodities have power to pass any law or take any executive action prohibiting or restricting the entry into or export from the Province of goods of any class or description. "Trade and Commerce" fall under entry 27 and "Production, supply and distribution of goods" fall under entry 29 of the Provincial Legislative List. The Federal Court held in the case referred to that the provision in sec. 297(1)(a) refers to legislation in respect of entries 27 and 29 and has no application to legislation in respect of entry No. 31 and as the provision under consideration in that case related to entry No. 31 and no to entry 27 an 29 the provision was in no way invalid. As, however, according to the view expressed by the Advocate General and the Government of India, the legislation in regared to the Molasses Bill under consideration related to entry No. 29 , the point whether clause 5 of the Bill would be held to be repugnant to the provisions of section 297(1)(a) of the Government of India Act on the ground that in effect it prohibits the entry of molasses into certain areas required consideration. The point was referred to the Advocate General for opinion and a copy of the opinion given by him is sent herewith- herewith . In his view clause 5 of the Bill does not offend against sec. 297(1) of the Govt. of India Act . The Legislative Deptt. of the Governmentof India in its letter dated 9th June 1942 has also considered the question. According to the view taken by that Deptt.

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the Bill is in danger of coming into conflict with the provisions of section 297(1)(a) of the Government of India Act but it observes that so long as the Bill on becoming law is oper-ed in such manner as to avoid falling foul of this constitutional provision, that is to say, so long as licenses are freely (and perhaps cheaply) granted for uses against which the Bill is not purporting to legislate, especially when inter-provincial trade in the co modity is like ly to be a fected,it may not be necessary to insert in the Bill provision expressily designed to conform to this section 297 of the Government of India Act

Section 297(1)(a) is intended mainly to safeguard inter-provincial trade and the Bill is not in its operation intended to affect such trade, the view of the Government of India therefore may be accepted and instructions may be issued by R.D. after the Bill becomes law in conformity with the observations of that Government in respect of the grant of licences. In this view no further provision in the Bill would be necessary and the Bill may now be proceeded with in its present form with the deletion of sub-clause (3) of clause 5.

O.C S.M.M.

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Homembrancer of Legal Affairs.

U.R. to R.D. No. 4916, dated the 16th June 1942.

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Acts.

Publication of the Bombay Mollasses Act , 1942.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 8493
Vombay Castle, 20th October 1942.

Letter to the Secretary to the Governor , No. 7378, dated the 15th September 1942.

Letter from the Secretary to the Governor, No. 201(49) dated the 16th October 1942.

With reference to your letter No. 7378, dated the 15th September 1942. on the above subject, I am directed to forward herewith the copy of the Bombay Molasses Bill, 1942, with His Excellency the Governor-General's assent signified thereon

RESOLUTION.---The law should be published as Bombay Act. No. XVIII of 1942, in the Bombay Government Gazette dated the 21st October 1942.

2. The Act should translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Revenue Department.

By order of the Governor of Bombay,

sd/- H.K.Dravid.

For { P.N.Moos,
Secretary to Government

To,
The
The Manager, Government Central Press, Bombay (with a copy of the Act and with a request that 15 Gazette a copies of the Act may be forwarded to the Legal Department.). With
The Revenue Department. 9 a copy
The Oriental Translator to Government.) of the
The Secretary to the Bombay Legislative Council.) Act.
The Secretary to the Bombay Legislative Assembly)

*With five extra copies.

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No. 201(49)
Cover Office of the Governor's Secretary,
Government House,
Bombay , 16th October 1942.

From

S. Garvin, Esquire, I.C.S.
Assistant Secretary to
the Governor of Bombay.

To. The Secretary to Government,
Legal Department, Bombay.

Subject:-The Bombay Molasses Bill, 1942.

Sir,

With reference to your letter No. 7378, dated the 15th September 1942, on the above subject, I am directed to forward herewith the copy of the Bombay Molasses Bill , 1942, with His Excellency the Governor-General's assent signified thereon.

Your obedient servant,

Sd/-
for (Assistant Secretary to the
(Governor of Bom-bay.

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Offences under the Act to be bailable.

17. (*1*) The offences punishable under this Act shall be bailable.

(*2*) Any officer empowered under section 12 to investigate an offence punishable under this Act shall have power to grant bail in accordance with the provisions of the Code to any person arrested without warrant for an offence punishable under this Act.

Officers to act subject to orders of Government.

18. All officers shall exercise the powers and perform the duties conferred and imposed on them by or under this Act in accordance with such orders, not inconsistent with the provisions of this Act, as in the case of the Commissioner, the Provincial Government and in the case of other officers the Provincial Government or the Commissioner may from time to time make.

Protection of persons acting in good faith and limitation of suits and prosecutions.

19. (*1*) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or the rules made under this Act.

(*2*) No suit shall lie against the Crown and no prosecution or suit shall lie against any Officer in respect of anything done, or alleged to have been done, in pursuance of this Act, unless the suit or prosecution has been instituted within four months from the date of the act complained of.

Rules.

20. (*1*) The Provincial Government may, by notification published in the *Official Gazette*, make rules for the purpose of carrying into effect the provisions of this Act.

(*2*) The power to make rules under this section shall be subject to the condition of previous publication.

~~DRAFT BILL.~~

GOVERNOR'S BILL No. XVII OF 1942.

A Bill to provide for the control of the possession of molasses.

WHEREAS it is necessary to provide for the control of the possession of molasses in order to prevent its use for the manufacture of liquor in the Province of Bombay;

AND WHEREAS the Governor of Bombay has assumed to himself under the Proclamation dated the 4th November 1939, issued by him under section 93 of the Government of India Act, 1935, all powers vested by or under the said Act in the Provincial Legislature;

26 Geo. 5, ch. 2.

NOW, THEREFORE, in exercise of the said powers, the Governor of Bombay is pleased to make the following Act:—

Short title.

1. This Act may be called the Bombay Molasses Act, 1942.

Extent and commencement.

2. (*1*) This Act extends to the whole of the Province of Bombay.

(*2*) Section 1 and this section shall come into force at once. The Provincial Government may, by notification in the Official Gazette, direct that sections 3 to 20 shall come into force in any area in the Province of Bombay on such date as may be specified in the notification.

Definitions.

3. In this Act unless there is anything repugnant in the subject or context—

(*1*) The expressions "Abkari Officer", "Collector" and "Commissioner" shall have the same meanings as they have in the Bombay Abkari Act, 1878.

Bom. V of 1878.

(*2*) "Code" means the Code of Criminal Procedure, 1898.

V of 1898.

(*3*) "Licence" means a licence for the possession of molasses granted under sub-section (*2*) of section 5.

SM Bk H 639—1

(*4*) "Molasses" means the heavy, dark coloured residual syrup drained away in the final stage of the manufacture of gur or sugar containing, in solution or suspension, sugars which can be fermented, and includes any product formed by the addition to such syrup of any ingredient which does not substantially alter the character of such syrup but does not include any article which the Provincial Government may by notification in the *Official Gazette* declare not to be molasses for the purposes of this Act.

Appointment of persons to exercise the powers of a Collector under this Act.

4. The Provincial Government may, by notification in the Official Gazette, appoint any person to exercise, in any area, all the powers and perform all the duties conferred and imposed by this Act on a Collector.

Regulation of possession of molasses.

5. (*1*) No person shall have in his possession any quantity of molasses.

(*2*) Notwithstanding anything contained in sub-section (*1*), the Provincial Government may, by general or special order, authorise any Collector to grant licences for the possession of molasses. Such licences shall be in such form and if granted shall be granted subject to such conditions and restrictions and on payment of such fees as the Provincial Government may direct.

Suspension or cancellation of licences.

6. (*1*) The Collector may suspend or cancel any licence—

(*a*) if any fee payable under such licence is not duly paid ; or

(*b*) if there is any breach of any of the conditions of such licence or of any licence previously granted to the holder of such licence by the holder of such licence or by his servant or by any person acting on his behalf with his express or implied permission ; or

(*c*) if the holder of such licence or his servant or any person acting on his behalf with his express or implied permission is convicted of any offence punishable under this Act or the Bombay Abkari Act, 1878. Bom. V of 1878.

(2) The holder of any licence shall not be entitled to any compensation for the cancellation or suspension of such licence under sub-section (1) nor to refund of any fees paid in respect thereof.

Penalty for contravention of this Act, rules or licences.

7. Whoever has in his possession any quantity of molasses in contravention of the provisions of this Act or the rules made thereunder or of any licence granted under this Act shall, on conviction, be punishable with fine which may extend to five hundred rupees or with imprisonment which may extend to one month or with both.

Confiscation.

8. All molasses which is possessed by any person or kept in any place in contravention of the provisions of this Act or rules made thereunder or of any licence granted under this Act and every box, receptacle, package or covering in which such molasses is contained shall be liable to confiscation.

Explanation.—For the purposes of this Act, all molasses for the possession of which a licence has not been granted under section 5 or if granted, has been cancelled or has ceased to be in force, shall be deemed to have been possessed or kept in contravention of the provisions of this Act.

Compounding offences.

9. (1) The Commissioner or any Collector or any other Abkari Officer specially empowered by the Provincial Government in this behalf may accept from any person whose licence is liable to be cancelled or suspended under section 6 or who is reasonably suspected of having committed an offence under section 7 a sum of money in lieu of such cancellation or suspension or by way of composition for the offence which may have been committed, as the case may be; and in all cases whatsoever in which any property has been seized as liable to confiscation under this Act may release the same on payment of the value thereof as estimated by such officer.

(2) On the payment by such person of such money or value or both, as the case may be, to such officer, such person if in custody shall be set at liberty and the property seized shall be released and if criminal proceedings shall have been instituted against such person, the composition

shall be held to amount to an acquittal and in no case shall any further proceedings be taken against such person or property with reference to the same facts.

Issue of warrants.

10. (*1*) Any Magistrate or any Police or Abkari Officer not below the rank of an Inspector may issue a warrant—

(*a*) for the arrest of any person who, he has reason to believe, has committed an offence punishable under this Act, or

(*b*) for the search, whether by day or by night, of any building, vessel, vehicle or place in which he has reason to believe that any molasses liable to confiscation under this Act is kept or concealed.

(*2*) All warrants issued under this section shall be executed in accordance with the provisions of the Code by a Police Officer or by an Abkari Officer duly empowered by the Provincial Government in this behalf or if the officer issuing the warrant deems fit, by any other officer.

Power of entry, search, seizure and detention.

11. (*1*) Any Police or Abkari Officer duly empowered by the Provincial Government in this behalf may—

(*a*) enter and search by day or by night, any building, vessel, vehicle or place in which he has reason to believe that any molasses liable to confiscation under this Act is kept or concealed ;

(*b*) seize any molasses which he has reason to believe is liable to confiscation under this Act and any box, receptacle, package or covering in which such molasses is contained ; and

(*c*) arrest, detain or search any person who he has reason to believe is guilty of an offence punishable under this Act.

(*2*) All arrests and searches made under this section shall be made in accordance with the provisions of the Code.

Officer to have powers of investigation.

12. (*1*) Every Abkari or Police Officer, not below such rank as the Provincial Government may determine, shall within the area for which he is appointed, have power to investigate all offences punishable under this Act.

(*2*) Every such officer shall in the conduct of such investigation exercise the powers conferred by the Code, upon an officer in charge of a police station for the investigation of a cognizable offence :

Provided that—

(*a*) if such officer is of opinion that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of an accused person to a Magistrate, or that the person arrested may be discharged with a warning, such officer shall release him on his executing a bond, with or without sureties, to appear, if and when so required, before a Magistrate and shall make a full report of the case to his official superior and be guided by the order which he shall receive on such report ;

(*b*) the powers of an Abkari or Police Officer empowered under this section shall be subject to such further modifications or restrictions as the Provincial Government may determine.

Presumption as regards offences under section 7.

13. In all prosecutions under section 7 it shall be presumed until the contrary is proved that the accused person has committed an offence under that section in respect of any molasses for the possession of which he is unable to account satisfactorily.

Possession by one person on account of another.

14. (*1*) When any person has in his possession molasses on account of any other person and such other person knows or has reason to believe that such possession is on his account, the molasses shall, for the purposes of this Act, be deemed to have been in the possession of such other person.

(*2*) Nothing in sub-section (*1*) shall absolve any person who has possession of any molasses on account of another person from liability to any punishment under this Act for the unlawful possession of such molasses.

Procedure when molasses or other article is seized.

15. When any molasses or any other article has been seized under section 10 or 11, the officer

who seized such molasses or article, shall after making such inquiry as he may deem necessary—

(*a*) if it appears to him that such molasses or article is required as evidence in any case, forward it to the Magistrate concerned;

(*b*) if it appears to him that such molasses or article is liable to confiscation under this Act but is not required as evidence in any case, forward it along with a report of the particulars of the seizure to the Collector through his superior officer; and

(*c*) in any other case, not falling under clause (*a*) or (*b*), return it to the person from whose possession it was taken and report to his superior officer accordingly.

Procedure when molasses or other article is forwarded to Collector.

16. (*1*) If the Collector to whom any molasses or other article has been forwarded under clause (*b*) of section 15, finds after making such enquiry as he may deem necessary that such molasses or article is liable to confiscation under this Act, he shall order that such molasses or article shall be confiscated:

Provided that the Collector shall not pass such order before the expiration of fifteen days from the date on which the molasses or article was seized and without hearing the person, if any, claiming within the said period any right thereto and the evidence, if any, which such person produces in support of his claim:

Provided further that if the Collector so deems fit, he may at any time direct that the molasses or article shall be sold, and the provisions of this sub-section shall apply, so far as may be, to the net proceeds of the sale:

Provided also that the Collector may if he so deems fit direct that the molasses shall be destroyed.

(*2*) The order passed by the Collector under sub-section (*1*) shall be final.